

Order

Of the Bar Harbor Town Council

For the June 8, 2010 Town Meeting

It is hereby ordered that the following article be placed on the special town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

LAND USE ORDINANCE AMENDMENT– Shoreland Standards – Shall an Ordinance dated February 2, 2010 and entitled “An amendment to update the standards for Shoreland Districts” be enacted?

Shoreland Standards

An amendment to update the standards for Shoreland Districts.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE II Establishment of Districts

§ 125-14. Interpretation of district boundaries.

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- C. Boundaries indicated as approximately following shorelines of any ~~lake or pond water body or wetland~~ shall be construed as following the normal high-water line or upland edge of a wetland.

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- ~~D. Boundaries indicated as approximately following the center lines of streams, rivers, or other continuously flowing watercourses shall be construed as following the channel center line of such watercourses.~~

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- DE. Boundaries indicated as being parallel to or extensions of features listed above shall be so construed.

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- EF. Distances not specifically indicated on the official map shall be determined by the scale

of the map.

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- FG. Where physical or natural features existing on the ground are at variance with those shown on the official map, or in other circumstances where uncertainty exists with respect to the location of a boundary, the Board of Appeals shall interpret the district boundaries; provided, however, that in all cases the determination of any shoreline setback shall be determined by actual site measurement.

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ARTICLE III Land Use Activities and Standards

§ 125-47. Shoreland General Development I.

- D. Minimum front setback: zero [feet] for that part of the district situated on the north side of West Street between ~~the westerly side of the~~ Municipal Pier and the point opposite the center line of Main Street; 15 [feet] elsewhere.
- F. Minimum rear setback: zero [feet] for that part of the district situated on the north side of West Street between ~~the westerly side of the~~ Municipal Pier and the point opposite the center line of Main Street, provided that structures may be built out over the water subject to site plan review and all state and federal regulatory approvals; 15 [feet] elsewhere, provided that structures may be built out over the water subject to site plan review and all state and federal regulatory approvals.

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§ 125-51. Marine Research.

- C. Minimum shore frontage: 150 [feet] per dwelling unit adjacent to tidal areas; 200 [feet] for all other uses and structures excluding functionally water-dependant structures.
- G. Minimum setback from shoreline: zero [feet] for functionally water-dependent uses; 75 [feet] for all other uses.
- J. Maximum height: 35 [feet] within 250 feet of ~~normal high water line~~ the shoreline or upland edge of a wetland; 40 [feet] elsewhere.

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§ 125-51.1 Educational Institution.

- C. Minimum shore frontage: 150 [feet] per dwelling unit adjacent to tidal areas; 200 [feet] for all other uses and structures excluding functionally water-dependant structures.
- G. Minimum setback from shoreline: zero for functionally water-dependent uses; 75 feet for all other uses.

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ARTICLE IV Nonconformity

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§ 125-55. Nonconforming structures.

A. No structure shall be enlarged, altered or extended in any way that increases its nonconformity. Any enlargement, alteration or extension that does not project past existing walls, foundations or eaves that already encroach into the required setback area shall not be considered to increase a structure's nonconformity. However, the following limitations shall apply to nonconforming structures within 75 feet of the normal high water line of a water body, tributary stream, significant vernal pool or upland edge of a wetland and 100 feet from the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA:

- (1) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 125-55 (C) ~~(B)(3)~~ below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with 125-55 (A)(3) ~~(2)~~ below, and the foundation does not cause the structure to be elevated by more than three (3) additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

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- (2) Notwithstanding the provisions of Subsection A(1), no structure which is less than the required setback from the normal high water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland, ~~nor may any portion of such structure which is less than the required setback be expanded in floor area or volume by 30% or more during the lifetime of the structure. The thirty percent expansion limitation shall only be applied to a structure constructed after January 1, 1989.~~

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- (3) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30 percent or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 125-55(B) below, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30 percent in floor area and volume since that date.

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B. Any structure may be razed and rebuilt up to the dimensions (length, width and height) of the individual structure that was razed plus any enlargements, alterations or extensions permitted by Subsection A(1), provided rebuilding is begun within one year and completed within two years after the structure is razed; provided, however, that such rebuilding of any nonconforming structure which is located less than the required setback from the normal high water line of a water body, tributary stream, or upland edge of a wetland is in compliance

with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this chapter. In no case shall a structure rebuilt under this subsection be combined with another structure or be reconstructed or replaced so as to increase its nonconformity. [Amended 5-7-1991; 11-5-1991; 5-6-1996; 11-2-1999; 11-4-2003; 11-7-2006; 11-4-2008]

(1) Any nonconforming structure which is located less than the required setback from the normal high water line of a water body, tributary stream, or upland edge of a wetland and which is removed by 50% or less of the market value or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

(2) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent, as determined by the Planning Board or its designee in accordance with § 125-55C below and the physical condition and type of foundation present if any ~~the purposes of this chapter~~. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to § 125-55A(1) above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with § 125-55C. [Amended 11-3-2009]

~~(3) In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, the type and amount of vegetation to be removed to accomplish the relocation and the physical condition and type of foundation present, if any.~~

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§ 125-56. Nonconforming lots. [Amended 11-5-1991; 5-4-1992; 5-2-1994; 6-13-2006^{EN}; 11-7-2006]

A. Such building or construction shall, in all other respects, comply with the provisions of this

chapter.

- B. No construction shall be commenced until the owner demonstrates to the satisfaction of the Code Enforcement Officer that there is reasonable access to the site for emergency vehicles.
- C. Two or more nonconforming vacant parcels of land in common ownership shall be consolidated to form one or more lots conforming so far as possible to the lot standards of the district in which the parcels are located. If possible, the lots shall be consolidated so that no nonconforming lot or lots are formed.
- D. One or more nonconforming vacant parcels of land that adjoins a conforming parcel containing a building or structure, shall be consolidated to the extent necessary to bring the lots into conformity so far as possible. If the remaining portion of the vacant parcel(s) constitutes a conforming lot, said remaining portion shall constitute a separate lot, otherwise combined lots shall constitute one lot.
- ~~D~~E. One or more vacant parcels of land that adjoin a nonconforming lot in common ownership and containing a building or structure shall be consolidated with said improved lot to the extent necessary to bring the improved lot into conformity so far as possible. If the remaining portion of the vacant parcels constitutes a conforming lot, said remaining portion shall constitute a separate lot. Otherwise, the combined lots shall constitute one lot.
- ~~E~~F. If two or more principal uses or structures exist on a single lot of record, each may be sold on a separate lot provided that the State Minimum Lot Size Law (12 M.R.S.A. Sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.
- ~~E~~G. Notwithstanding any other provision of this chapter, no nonconforming lot within any shoreland district may be built on unless that lot has at least 100 feet of shore frontage and 20,000 square feet of lot area and can meet State Plumbing Code requirements for on-site sewage disposal or is served by a public sewer. The requirements of this subsection may not be modified by variance.

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§ 125-58. Site plan review required. [Amended 5-5-2003]

- A. Except as provided in Subsections B(1), (2), ~~and (3)~~, and (4) below, major site plan review and approval by the Planning Board shall be required for:

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ARTICLE V Site Plan Review

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§ 125-66. Submission requirements. [Amended 5-6-1996; 11-6-2001; 5-5-2003]

- J. Maps, plats or plans. Subject to the note below,^{#EN} one or more maps, plats or plans indicating such of the following as are applicable:
 - (30) +* Locations of all water bodies, tributary streams, and wetlands on the site and within ~~200~~ 250 feet of the shoreline thereof; [Amended 6-13-2006^{iiiEN}]
 - (31) +* ~~Normal high water line shoreline~~;

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§ 125-67. General review standards.

B. Lot standards. Except as modified by the provisions for planned unit developments set forth in § 125-69M and S, as applicable, any proposed structure or lot must comply with the lot size, area per family, road frontage, lot width, and front, side and rear setback requirements, and the shoreland zone lot standards in §Section 125-68B as determined by reference to Article III for each district in which it is proposed subject to the following: [Amended 5-7-1991; 11-5-1991; 5-1-1995; 5-6-1996; 11-2-1999; 11-4-2003; 5-3-2004; 11-2-2004; 5-2-2005; 6-13-2006^{+EN}]

(6) Exceptions to setback. The following structures, subject to the limitations set forth below, are not subject to the setback requirements of the district in which they are located, provided that no such structure shall be constructed in such a way as to obstruct visibility from the end of any driveway or otherwise to constitute a safety hazard, and provided that the following structures comply with the provisions in §§ 125-68B(8) and (12), if applicable. [Amended 5-2-2005; 11-7-2006; 11-4-2008]

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L. Stormwater management. All site plans shall demonstrate that the proposed development shall provide for adequate stormwater management in compliance with the following standards and must be maintained as necessary to ensure proper functioning:

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§ 125-68. Shoreland Standards.

A. Notwithstanding and in addition to any other provisions of this chapter, before granting site plan approval or a building permit for:

- (1) Any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal high water line of a water body or within a wetland;
- (2) Any land use activity situated entirely or partially within 250 feet, horizontal distance, of the ~~normal high water line~~ shoreline of any great pond, or river, within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, or within 75 feet, horizontal distance, of the normal high-water line of a stream, tributary stream, significant vernal pool as such terms are defined in 38 M.R.S.A. § 435 et seq. and § 125-109 of this chapter.

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B. The Planning Board, Code Enforcement Officer or Planning Department, as applicable, must find that the proposed plan will comply with such of the following standards, and all land use activities within the shoreland zone shall conform to the following standards as are applicable:

- (2) Timber harvesting.^{+EN} All site plans shall demonstrate that all timber harvesting proposed in a shoreland area shall comply with the following minimum requirements: [Amended 11-4-2008]
 - (a) Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high water ~~mark~~ line, except to remove safety hazards.

- (b) Beyond the 75 foot strip referred to in Section 125-68(B)(2)(a) above, timber harvesting is permitted in accordance with Section 125-~~68(B)(2)(c)~~ below except that in no case shall the average residual basal area of trees over 4½ feet above ground level be reduced to less than 30 square feet per acre.
- ~~(c)~~(b) Except as provided in the preceding subsection and in Subsection B(2)(a) and ~~(b)(e)~~, selective cutting of no more than 40% of the trees four inches or more in diameter, measured at 4 1/2 feet above ground level, shall be allowed in any ten-year period, ~~provided that in addition:~~
- [1] Within 100 feet, horizontal distance, of the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland, or within 25 feet from a significant vernal pool, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - [2] At distances greater than 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA and greater than 75 feet, horizontal distance, of the normal high water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clear-cut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.
 - [3] Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed. No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland and between 50 and 250 feet, horizontal distance, or the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
 - [4] Timber harvesting equipment shall not use stream channels as travel routes except when:
 - [a] Surface waters are frozen; and
 - [b] The activity will not result in any ground disturbance.
 - [5] All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
 - [6] Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
 - [7] Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet in width in horizontal distance for slopes up to 10% shall be retained between the exposed mineral soil and the normal high water line of a water body, significant vernal pool or upland edge of a wetland. For each ten-percent increase in slope,

the unscarified strip shall be increased by 20 feet in horizontal distance. The provisions of this subsection apply only to a face sloping toward the water body, ~~or wetland, or significant vernal pool~~; provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet in horizontal distance from the normal high water line mark of a water body or upland edge of a wetland.

(~~d~~e) Subject to all other limitations imposed in Subsection B(2)(~~c~~) (~~a~~) and (~~b~~), the Planning Board shall approve timber harvesting in excess of the forty-percent limitation within a shoreland district upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such harvesting is necessary for good forest management and will be carried out in accordance with the purposes of this chapter and the mandatory shoreland zoning laws of the State of Maine. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each approval granted under this section within 14 days of the Planning Board approval.

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(4) Erosion and sedimentation control. All site plans shall demonstrate through a submitted written soil erosion and sedimentation control plan that filling, grading, lagooning, dredging, earth-moving activities and other land use activities in a shoreland area shall be conducted in such manner to prevent, to the maximum extent possible, erosion and sedimentation of surface waters and shall further demonstrate that, in addition to the requirements of § 125-67Q, such activities shall comply with the following:

(a) On slopes greater than 25%, there shall be no grading or filling within 100 feet of the ~~normal high water line~~ shoreline, or upland edge of a wetland except to protect the shoreline and prevent erosion.

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(6) Uses extending over or below the shoreline. Site plans for piers, docks, wharves, breakwaters, causeways, marinas or other structures or uses extending over or below the shoreline shall demonstrate that the proposed development will comply with the following requirements; provided, however, that such compliance shall not relieve the applicant from obtaining, before construction begins, all other required federal, state and local licenses and permits.

(f) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending ~~beyond below~~ the normal high water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity. Buildings which are constructed and used for the purpose of providing public safety services that are related in any way to activities on or near a water body shall be deemed to require direct access to the water body as an operational necessity and shall be exempt from the provisions of Section 125-68. [Amended 11-4-2008]

(h) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending ~~beyond below~~ the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

(i) Except in the shoreland general development districts, structures built on, over or abutting a pier, wharf, dock or other structure extending ~~beyond below~~ the normal

high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure. Note: Permanent structures extending over or below the shoreline shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C.

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- (8) Roads and driveways. All site plans for development, including roads, shall demonstrate that such roads shall be located, constructed and maintained so that minimal soil erosion and sedimentation of surface water results. Further, all roads, driveways, drainage systems, culverts and related features constructed in a shoreland area shall comply with the following:

(h) Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection ~~B(4)D~~ of this section. [Amended 11-4-2008]

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- (9) Subsurface wastewater. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first time residential use in the Shoreland district. All site plans for shoreland areas shall demonstrate that all subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size. The minimum setback for subsurface sewage disposal systems shall be no less than 100 horizontal feet from the ~~shoreline normal high water line~~ of a perennial water body. These requirements shall not be reduced by variance.

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- (b) Except in areas as described in Subsection M(1) above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, 75 feet, horizontal distance, from any other water body, tributary stream, stream, significant vernal pool or the upland edge of a freshwater wetland, and 25 feet from the upland edge of a forested wetland, a buffer strip of vegetation shall be preserved as follows:

[ii] For the purposes of ~~this subsection~~ Section B(13)(b)[2], "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot by fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been recruited into the plot.

- [3] In order to protect water quality and wildlife habitats adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed except to provide for a footpath or other permitted uses as described in Section B(13)(b)[1] and [2]~~the preceding subsections.~~
- [6] Subsection B(13)(b)[2] ~~M(2)~~ does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
- (c) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA and 75 feet, horizontal distance, from the normal high water line of any other water body, tributary stream, significant vernal pools, or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate 25% of the lot area within the shoreland district or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the shoreland general development districts ~~General Development or Commercial/Fisheries/Maritime Activities District.~~
- (e) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section B(13)~~this section.~~

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- (12) Principal and accessory structures. All site plans shall demonstrate that all principal and accessory structures in a shoreland district shall comply with the following:
 - (a) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the ~~normal high water line~~ shoreline of great ponds classified GPA and rivers that flow to great ponds classified GPA and 75 feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, significant vernal pools or the upland edge of a wetland; except that in a shoreland general development district, the setback from the ~~normal high water line~~ shoreline shall be at least 25 feet, horizontal distance. In the resource protection district, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply. In addition: [Amended 11-7-2006; 11-4-2008]
 - (b) Except in areas as described in Subsection 13(A) M(1) above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, 75 feet, horizontal distance, from any other water body, tributary stream, stream, significant vernal pool or the upland edge of a freshwater wetland, and 25 feet from the upland edge of a forested wetland, a buffer strip of vegetation shall be preserved as follows:

- [2] Selective cutting of trees within the buffer strip is allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained.
 - [a] For the purposes of this section, a "well-distributed stand of trees" adjacent to a great pond classified GPA, or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each twenty-five-foot by fifty-foot square (1,250 square feet) area, as determined by the following rating system:
 - [ii] For the purposes of Section B(13)(b)[2] this subsection, "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot by fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been recruited into the plot.
 - [3] In order to protect water quality and wildlife habitats in the shoreland zone adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed except to provide for a footpath or other permitted uses as described in B(13)(b)[1] and [2] the preceding subsections.
 - [6] Subsection B(13)(b)[2] M(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
- (c) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA and 75 feet, horizontal distance, from the normal high water line of any other water body, tributary stream, significant vernal pools, or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate 25% of the lot area within the shoreland district or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the shoreland general development districts ~~General Development or Commercial/Fisheries/Maritime Activities District.~~
- (e) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section B(13) this section.

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M. Planned Unit Development - Outlying Area (PUD-O). [Amended 6-13-2006^{ivEN}]

(4) Parcel size and eligibility. [Amended 11-4-2008]

- (a) The application parcel cannot contain in the aggregate more than 50% of the following land type(s):

- [3] Areas within 75 feet, horizontal distance, of the ~~shoreline~~ normal high water line of a stream, great pond, river, ~~coastal wetland~~ saltwater body or significant vernal pool;

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§ 125-69. Standards for particular uses, structures or activities.

S. Planned Unit Development - Village (PUD-V). [Added 6-13-2006^{*EN}]

(4) Parcel size and eligibility.

(a) The minimum size of a parcel seeking application for PUD-V shall be the minimum lot size in its neighborhood district.

(b) The application parcel cannot contain in the aggregate more than 30% of the following land type(s):

[1] Wetlands and significant vernal pools;

[2] Sustained slopes greater than 20%;

[3] Areas within 75 feet, horizontal distance, of ~~the shoreline~~ the normal high water line of a stream, great pond, river, ~~saltwater body~~ coastal wetland or significant vernal pool;

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ARTICLE VIII Standard Conditions

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§ 125-90. Time frames for completion.

A. Permits. Activities or uses for which a permit from the Code Enforcement Officer is required shall be commenced within six months and, except for activities and uses which are by their nature ongoing, shall be substantially completed within 12 months of the issuance of the permit. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. Failure of the applicant to abide by the time requirements of this subsection shall render the permit null and void and require the applicant to obtain a new permit before the activity or use may proceed further.

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ARTICLE X Enforcement

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§ 125-100. Code Enforcement Officer. [Amended 11-5-1991]

D. Records. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied by the Board of Appeals, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record shall be submitted to the Director of the Bureau

of Land ~~Quality Control~~ and Water Quality within the Department of Environmental Protection.

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ARTICLE XI Appeals and Variances

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§ 125-102. Variances.

- A. Authority. A variance may be granted by the Board of Appeals from the restrictions imposed by this chapter on lot coverage and front, side or rear setback only where a strict application of such restrictions to the petitioner and the petitioner's property would cause undue hardship. A variance shall not be granted to permit a use or structure otherwise prohibited by this chapter. [Amended 5-2-1994]

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D. Submissions generally.

- (1) At least 20 days prior to the Board of Appeals meeting at which a petitioner wishes to be heard, the petitioner shall provide to the Planning Department copies of all application materials in the form and quantity described in § 125-61B, except that each submission shall be conspicuously labeled "Variance Exhibit 1," "Variance Exhibit 2," and so on, in consecutive fashion. The petitioner shall also provide the ~~Commission~~ Commissioner of the Department of Environmental Protection with one copy of all application materials in the form and quantity described in § 125-61B at least 20 days prior to the Board meeting. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. Comments from the Commissioner must be received at least two (2) days prior to a hearing in order to be included in the record. [Amended 11-4-2008]

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D. Hearing.

- (1) Appellate review hearings.
- (l) Deliberation and decision. Within 30 days after the public hearing on an application for administrative appeal, the Board of Appeals shall deliberate to determine whether the record on appeal shows that the decision appealed is clearly contrary to the specific provisions of this chapter. The Board shall defer to all findings of fact by the decision-maker below that are supported by substantial evidence.
- [1] If the Board of Appeals finds that the decision is, in fact, contrary to the specific provisions of this chapter, it may reverse the decision, subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board, Design Review Board or the Code Enforcement Officer for further proceedings consistent with Board of Appeals' decision.

- [2] If the Board of Appeals does not find that the decision appealed is clearly contrary to the specific provision of this chapter, it shall deny the appeal.
- [3] In either case, the Board of Appeals shall, within 7 days of the completion of its deliberations, mail or hand deliver to the Department of Environmental Protection a written copy of its decision, including written reasons supporting the decision, and within 7 ~~14~~ days of after the completion of its deliberations, mail or hand-deliver to the appellant, the appellant's representative and the Chairpersons of the Bar Harbor Planning Board, Design Review Board and Town Council a written copy of its decision, including specific written reasons supporting the decision. [Amended 6-10-2008]

(2) Evidentiary hearings.

(c) Deliberations and decision. Within 30 days after the public hearing on an application for an administrative appeal, the Board of Appeals shall deliberate to determine if a preponderance of the evidence presented in the appeal shows that the appellant is entitled to the relief requested.

- [1] If the Board of Appeals finds that the appellant is entitled to relief, it may reverse the decision, subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board, Design Review Board or the Code Enforcement Officer for further proceedings consistent with the Board of Appeals' decision.
- [3] In either case the Board of Appeals shall, within 7 days of the completion of its deliberations, mail or hand deliver to the Department of Environmental Protection a written copy of its decision, including written reasons supporting the decision, and within 7 ~~14~~ days of after the completion of its deliberations, mail or hand-deliver to the appellant, the appellant's representative and the Chairpersons of the Bar Harbor Planning Board, Design Review Board and Town Council a written copy of its decision, including specific findings of fact supporting the decision. [Amended 6-10-2008]

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ARTICLE XII Construction and Definitions

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§ 125-109 Definitions.

The subsequent terms shall have the following meanings:

BASAL AREA – The area of a cross-section of a tree stem at 4.5 feet above ground level and inclusive of bark.

CAMPGROUND (SHORELAND DISTRICTS) – Any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

DEVELOPMENT (SHORELAND DISTRICT) -- A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

DWELLING UNIT (SHORELAND DISTRICTS) - - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

DRIVEWAY - - A vehicular access-way ~~less than 500 feet in length of any length,~~ constructed in accordance with the standards set forth in this chapter, serving two single-family dwellings or one two-family dwellings or less.

ENLARGEMENT -- An addition to the floor area or volume of an existing building, an increase in the size or volume of any other structure, an increase in the ground area of that portion of a tract of land occupied by an existing use ~~the addition of weeks or months to a business' operating year, the addition of hours to a business' operating day or the provision of additional seats, seating capacity or guest rooms.~~

INSTITUTIONAL -- A use, building or structure devoted to some public, governmental, educational, charitable, religious, medical or similar purpose.

LOT COVERAGE -- Except as otherwise provided in § 125-67B(8), the footprint area of all structures and improvements calculated as a percentage of the area of the lot shall be considered to be lot coverage, including but not limited to principal and accessory buildings; all improved vehicular and pedestrian surfaces, such as parking lots, roads, driveways, maneuvering spaces, and pedestrian walkways, regardless of the construction material employed; or graveled areas. Unimproved natural surfaces of a site shall not constitute lot coverage, regardless of whether they are vegetated. Boats stored in cradles above an unimproved natural surface shall not constitute lot coverage. However, in the case of lumber yards, areas of stored lumber shall constitute lot coverage. [Amended 5-6-1996; 11-4-2003; 11-7-2006]

PATIO -- A level area adjacent to a dwelling unit constructed of stone, cement or other material, located at ground level, with no railing or other structure above the level of the ground. In all Shoreland Districts a patio shall be considered a structure.

PARKING AREA (SHORELAND DISTRICT) - - An open area used for parking one or more vehicles excluding an area associated with a driveway used for parking two vehicles or fewer.

STRUCTURE, WATER-RELATED -- A structure, including a pier, dock, wharf, float, crib, piling, boathouse, breakwater or causeway, the utility of which depends on its extending over or ~~beyond~~ below the normal high water line of a water body or within a wetland. See "use, water-dependent." [Amended 11-5-1991]

STRUCTURE, WATER-RELATED, PERMANENT -- Structures which extend over or ~~beyond~~ below the normal high water line of a water body or within wetland for seven months or more in any period of 12 consecutive months. [Amended 11-5-1991]

STRUCTURE, WATER-RELATED, TEMPORARY -- Structures which extend over or ~~beyond~~ below the normal high water line of a water body or within a wetland for less than seven months in any period of 12 consecutive months. [Amended 11-5-1991]

SUBSTANTIAL START -- The actual start date of construction is considered, but not limited to, construction, repairs, reconstruction, rehabilitation, and additions which occur within six months from the date the permit for such work was issued. Construction activities that do not require a building permit are not considered starting construction.

The start of construction includes, but is not limited to, the placement of a structure on a site, setting forms for the pouring of a slab or footings, the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or installation of more than 10 cubic yards of fill. The start of construction also includes, but is not limited to, the removal or installation of interior or exterior doors, windows, walls, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

The start of construction does not include land preparation, such as clearing, grading or filling of less than 10 cubic yards of fill. All activities, uses or construction allowed by a building permit must be started within six months from the date the permit was issued or the permit is null and void.

TIDAL WATERS -- All waters affected by tidal action during the highest annual tide or mean highest high water mark, whichever number requires the furthest setback from the water for the given year of measurement ~~maximum spring tide~~. [Added 11-4-2008]

USE, FUNCTIONALLY WATER DEPENDANT - - Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, inland waters and that cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot be reasonably located or operated at an inland site, and uses that primarily provide general public access to inland and tidal waters. ~~USE, WATER DEPENDENT — A use that requires for its primary purpose location on submerged lands or direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. Such uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters. See "structure, water-related."~~ [Amended 11-5-1991]

VEGETATION -- All live trees, shrubs, ~~ground cover~~, and other plants, including, without limitation, trees both over and under four inches in diameter measured at 4 1/2 feet above ground level.

VELOCITY ZONE - An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

~~WATER BODIES, LAKES AND PONDS~~ -- Natural or artificial bodies of water which retain water year-round. Artificial ponds may be created by dams or may result from excavation.

~~WATER BODIES, TIDAL AREA~~ -- Any area upon which tidal action occurs.

~~WATER BODIES, TRIBUTARY STREAM~~ -- A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock and which flows to a water body or wetland as defined. This definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland zone of the receiving water body or wetland. [Added 11-5-1991 amended 6-13-2006^{viEN}]

WETLAND, COASTAL – All tidal and sub-tidal lands, ~~including all areas below any identifiable debris line left by tidal action~~, all lands with vegetation present that is tolerant of saltwater and occurs primarily in a saltwater or estuarine habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed, as identified in tide tables published by the National Ocean Service. Coastal wetlands include coastal portions of sand dunes.

WETLAND, UPLAND EDGE -- The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the highest annual tide the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters (approximately twenty-foot) tall or taller. [Added 11-5-1991; amended 6-13-2006; 11-4-2008]

~~WETLAND, UPLAND EDGE -- The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters (approximately twenty-foot) tall or taller. [Added 11-5-1991; amended 6-13-2006; 11-4-2008]~~

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Key to Appendix C

Table of Permitted Uses

Footnotes

8 ~~Except as provided in Section 125-68.B(8)(g) Except to provide access to permitted uses within the district or where no reasonable alternative route or location is available outside the Resource Protection District, in which case Planning Board approval is required.~~

14 Except when the area is designated resource protection due to floodplain, in which case a site plan review is required.

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EXPLANATION: This amendment would bring the Land Use Ordinance into complete compliance with State Department of Environmental Protection regulation and eliminate several internal inconsistencies which currently exist.

Given under our hands and seal at Bar Harbor this ninth day of February 2010.

Municipal Officers of the Town of Bar Harbor

Sandy McFarland, Chair

Ruth A. Eveland, Vice Chair

Jane Disney, PhD.

Robert L. Jordan, Jr.

Peter St. Germain

Greg Veilleux

Paul A. Paradis, Secretary

ⁱ ~~Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.~~

ⁱⁱ Editor's Note: See the notes at the end of this Subsection J.

ⁱⁱⁱ ~~Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.~~

^{iv} ~~Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.~~

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